

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

Edward Gibbs pro-se,  
Appellant,

V.

Warden Thomas Carroll  
Appellee,

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0 Civ. Act. No.: 07-36-JF

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Motion For Evidentiary Hearing

Comes now, the appellant, Edward Gibbs pro-se, and moves this Honorable Court for Evidentiary Hearing. IN which a Jury Trial was held in Superior Court Sussex County; Judge Richard Stokes presided, Appellant was represented by public defender (Carole Dunn) and found guilty by a all white Jury on 10-30-2003. Appellant was Sentenced 12-19-2003 on the charge of Escape After Conviction 503-06-0519, to 20 years level V as a Habitual offender. At sentencing Appellant filed a motion to dismiss counsel which was denied by Judge Stokes; Appellant filed his own Direct Appeal in the Supreme Court 9-8-2004 and post conviction 8-11-2005 and now this petition for Habeas Corpus 1-15-2007, and states that all claims were Exhausted Appellant was never afforded a Evidentiary hearing in the lower courts. See Ricky Larp V. S.W. Ornoski. 421 F.3d 1158-1169 Citing Townsend; That a defendant is Entitled to an evidentiary hearing if he can show that: 1) the merits of the factual dispute were not resolved in the state hearing; 2) the state factual determination is not fairly supported by the record as a whole; 3) Fact finding procedure employed by state court was not adequately to afford full and fair hearing.

4) There is Substantial allegation of newly discovered evidence;  
 5) Material facts were not adequately developed at state court hearing;  
 6) for any reason it appears that state trier of fact did not afford  
 Retitioner full and fair hearing; 28 U.S.C.A § 2254 (d). *Earp v. Ornoski*  
 431 F.3d 1158 (2005)...

1) Defendant informed Judge Bradley 10-22-2003 that it was a conflict  
 between him and Counsel, See, Exhibit 1 Pg. 3 Appellant informing  
 Judge Bradley that he is not satisfied with counsel; See, *Campbell v. Rice*  
 265 F.3d 882; By contrast, when counsel's potential conflict of interest is  
 brought to the Court's attention, the trial judge is on notice and must  
 "take adequate steps" to protect the defendant's rights. *Holloway*, 435  
 U.S. at 484-85, 98 S.Ct. 1173, To properly perform this duty, the trial  
 judge must make an inquiry into the potential conflict. The judge  
 didn't make a proper inquiry into the conflict; See, Appellant Exhibit-2  
 Pg. 4, when the Court invited Dunn to contradict her client and to  
 undermine his veracity, Gibbs in effect "was left to fend for  
 himself, without representation by counsel... The 6<sup>th</sup> Amendment  
 guarantees the right to the effective assistance of counsel at all  
 critical stages of a criminal proceeding... U.S. v. Vincent Gonzalez 113  
 F.3d 1026, See, Exhibit-3 Pg. 5 counsel states that her and Appellant  
 approached case differently, See, Exhibit-4 Pg. 6 the judge states that  
 he'll see us at Trial next week, the conflict was never resolved,  
 Appellant sent research to assist counsel on his defense, See *Walter Micken*  
*v. John Taylor* 122 S.Ct. 1240 [12, 3,] The Sixth Amendment provides  
 that a criminal defendant shall have the right to "the assistance  
 of counsel for his defence". U.S. v. Cronin 104 S.Ct. 2039 "[we] have  
 presumed prejudice when counsel labors under an actual conflict  
 of interest.

U.S. v. Conkle 104 S.Ct. 2045 counsel failed to subject prosecution case to meaningful adversarial testing; See, Exhibit-5 pg. 3-8 Transcript from 12-19-2003 Sentencing Judge Stokes informed of conflict 10-22-2003 that wasn't resolved before Appellant trial and; the adversarial process protected by the 6th Amendment requires that the accused have counsel acting in the role of an advocate see footnote [17] To satisfy the constitution, counsel must function as an advocate for the defendant, as opposed to a friend of the court; Appellant on 12-19-2003 consequently [Gibbs] was denied effective assistance at the [Sentencing hearing] when Judge Stokes told Appellant to [step aside] *United v. Borg* 881 F.2d 696, 698 (9th Cir. 1989) A sentencing hearing is such a "critical stage". *U.S. v. Springer* 51 F.3d 861, 864 (9th Cir. 1995) by proceeding with the Sentencing hearing under these circumstances the Superior court abused its discretion. The appellant has proven 5 of the 6 claims to be awarded a evidentiary hearing, in accordance to *Fare v. Omoski*...

2) Appellant raised Ineffective Assistance of Counsel; counsel failed to subpoena Judge Stokes as Appellant witness: Appellant directs the courts attention to Exhibit-7 pg. 15-16 from 12-19-03 Sentencing (Dunn) never stated why witness wasn't subpoenaed. Appellant was forced to go to trial with a Lawyer that wouldn't subpoena his witness and had a conflict within which counsel never discussed a defense with Appellant; 6th Amendment right to counsel was violated; *Brown v. Caven* pg. 1169 [2-7] Brown states that "you are having a trial and it's stated that counsel only provided a perfunctory defense". counsel in Appellant case never presented any information Appellant sent her, counsel did ask the court to dismiss the case with the information she received from Appellant, all counsel done was cross examine witness at trial.

See, Williams 594 F.2d 1258 (1979) Pg. 1259 Williams and counsel incompatible and counsel and client were at serious odds. A Lawyer's first duty is Zealously to represent his/her client, Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary") Sanders v. Rutelle 21 F.3d 1446 (9th Cir. 1994) Pg. 1456: Counsel filed a Affidavit in regards to Appellants post conviction Counsel was admitted to Delaware but 10-30-2000 out of state member being certified 2001: Appellant had a trial 2003 with Counsel and Counsel didn't know the elements of said charge neither did the state they had to get Jury instructions from Kent County and had a meeting in which Appellant was not included. Counsel stated at sentencing 12-19-03 she don't interview witnesses, Ground five Pg. 6 Counsel admit she personally spoke with witness. See, Florencio Rolan V. Donald Vaughn 445 F.3d 682 pred. dice, Citing Gray, 878 F.2d at 712 3 Furthermore, in considering whether a Petitioner suffered prejudice, "[t]he effect of counsel's inadequate performance must be evaluated in light of the totality of the evidence at trial. A modified sentencing order is what was produced at trial, Judge Stokes sentenced Appellant on the VOP.

3) Appellant next claim Supreme Court Errored; Supreme Court didn't hear Appellant claim ineffective Assistance on direct Appeal: On 12-19-03 Appellant filed a motion to dismiss Counsel due to Counsel's ineffective representation of Appellant case; Court may review ineffective assistance claims on direct Appeal if record is sufficiently developed regarding merits of claim



U.S. v. Toms, 136 F.3d 196, 182 (D.C. Cir. 1998) Appellant has diligently presented his claims to Superior Court and on direct Appeal the Supreme Court refused to entertain the claim due to Judge Stokes stating raise the claim on Postconviction? In Lewis v. State 757 A.2d 714 First, since the question now raised by Lewis was not fairly presented to the trial Judge, it will not be addressed by this Court unless "the interest of justice so require". Lewis had to demonstrate plain Error. 2nd Supreme Court does not usually consider ineffective assistance of trial counsel claims in a direct Appeal. The court decided to address Lewis claims it presented questions relating to the Sixth Amendment, right to counsel, attorney ethics, judicial responsibility, and fundamental fairness. Appellant have proven plain error in his claims against counsel and the Supreme Court for not hearing this claim. Pg. 113. The assistant public defender who provided Lewis with exemplary and successful representation in this appeal did not represent Lewis at trial. Appellant filed his appeal pro-se, and should ~~of been~~ heard on direct Appeal.

4) Appellant claim Superior Court lacked jurisdiction; Appellant didn't make a valid waiver of his preliminary hearing; Counsel William Moore told Appellant to waive the preliminary hearing and he would get him a 30 day plea for escape 3rd which is at the bottom of waiver form. See waiver form as Exhibit-1 dated 6-19-03, Appellant was coerced to sign the waiver. A waiver is valid only if made in open court after the def. has been advised of the charges against him or her and of his Constitutional rights SEE Fed. R. Crim. P. 11(b); see e.g., U.S. v. Ferguson, 758 F.2d 843, 750-51 (2d Cir. 1985) waiver of Grand Jury indictment must be in open court, def. must be informed of nature and cause of accusation, and court must be satisfied that defendant waived rights knowingly, intelligently, and voluntarily); U.S. v. Moore, 37 F.3d 169 (5th Cir. 1994)

Prejudice. Taken from Webster's Dictionary of Law, Injury or detriment to one's legal rights or claims (as from the action of another). See pg. 9 last paragraph Counsel states, That conclusion, however, does not mean that adversarial testing of the State's case was not zealously pursued, or that advocacy on behalf of defendant at trial was deficient. Exhibit-2 See The 2nd Paragraph same page, After seeking clarifications from the prosecutor's office she admits she couldn't advance a defense. Appellant request a evidentiary hearing because the material facts were not adequately developed at the state-court-hearing. In support of the above allegations and claims See, *Earg V. Ornoski* 431 F.3d 1169 [8] [9] FN4. Also See; *T. Dickson V. L. Wainwright* 683 F.2d 351 (1982) [5] [6] And [7] [8] See, *D. Stevens V. D.C.* 152 F. Supp. 2d 577 (2001) [16] [17]. Appellant cites *Dennis Williams V. Frank Griswold* 443 F.2d 1544 [13] It is well established that the standards governing the sufficiency of habeas corpus petitions are less stringent when the petition is drafted pro-se and without the aid of counsel. FN 23.

Therefore Appellant states he never filed for Evidentiary hearing in this court, and hopes and pray that this court will order a Evidentiary hearing in accordance 28 U.S.C. § 2254 (b.c.) and the Sixth Amendment.

Edward Gibbs pro-se,  
Edward Gibbs

D.C. 1181 Paddock Rd.  
 Smyrna Del, 19977

Date: April 2, 2007

# Affidavit of mailing

State of Delaware

County of Newcastle

Be it remembered that on this 2nd day of April  
— A.D. 2007, According to Law deposes and says  
that he forwarded a copy of: Evidentiary Hearing &  
Exhibits;

To: Depart of Justice  
Circuit State off. bldg.  
820 N. French St.  
Wilmington Del, 19801

Clerk U.S. District Court  
U.S. District Court  
Lockbox 18844 King St.  
Wilmington Del, 19801

by United States mail with postage pre paid.

Dated: April 2, 2007

Edward Gibbs Pro-se  
Edward Gibbs

Del. Corr. Ctr.

1181 Paddock Rd.

Smyrna Del, 19787

Exhibit — 1

3

1 accepting or I am not pleading guilty to it, right.

2 Second of all, she hasn't even came to see me  
3 to discuss this case. You know what I am saying? So  
4 her representation, I am not even satisfied with that.

5 Another thing, Ms. Ryan got some transcripts  
6 from my bond review, right, and she is saying I can't  
7 get no copy of it. I don't know why I can't get a copy  
8 of it. I am saying the Rule 16 has been filed in this  
9 case and there was no mention of no transcripts.

10 Last week, I received a letter from  
11 Ms. Dunn talking about these transcripts. If she is  
12 going to bring them in to use against -- you know, what  
13 I am saying against me, I should be able to see them.

14 MS. RYAN: There was a transcript that I had  
15 done of remarks that Mr. Gibbs made during the course  
16 of his bond review when he was downstairs in the Court  
17 of Common Pleas at preliminary hearing. It is my  
18 thinking that the court reporter, both in the Court of  
19 Common Pleas and the Superior Court, that is part of  
20 how they make their money. When they do their  
21 transcript, I can't make a copy. If they want to get a  
22 copy, they can request a transcript themselves. I had  
23 to pay for it.



Exhibit - 2

1 I wrote a letter to Ms. Dunn alerting her  
2 that I had this and she could come and review it at any  
3 time, but because of its being done by a court  
4 reporter, I couldn't just give her a copy of it. So  
5 she came over to my office and reviewed it. It is five  
6 pages long. If Mr. Gibbs wants to read it, he is  
7 welcome to read it, but I will not provide a copy of  
8 it.

9 THE COURT: All right. Do you have any  
10 response to Mr. Gibbs' concerns about representation?

11 MS. DUNN: Well, Your Honor, it is true that  
12 I believe I did tell him some time ago that I would  
13 come and talk to him about his case, and that could  
14 have been just before the major trial started which was  
15 concluded a couple weeks ago. But I will say that we  
16 have been in pretty constant communication through the  
17 mail.

X 18 Mr. Gibbs has been sending me information  
19 that he has researched in the law library there. He  
20 has very specific and strong feelings about what  
21 constitutes the crime of escape after conviction. I  
22 have sent him case law on the subject and we have  
23 discussed the case. It is a one-count case and escape

1 after conviction is the charge, and the allegation is  
2 not returning to the Work Release Center.

3 THE COURT: You are obviously -- hang on a  
4 second. You are obviously satisfied that you will be  
5 prepared, certainly, by next Thursday? That's his  
6 trial date.

7 MS. DUNN: I feel prepared to go to trial,  
8 Your Honor. I will say that Mr. Gibbs and I have  
9 approached this case differently as to the legal  
10 definition of escape after conviction.

11 THE COURT: All right.

12 MS. DUNN: I don't believe it has affected my  
13 representation, however.

14 THE DEFENDANT: Excuse me. One more issue,  
15 okay? She sent me this witness list, right, a few  
16 months ago, and I filled it out and sent it to her.  
17 She told me to send it to her ten days prior to my  
18 trial.

19 I send her my list. I have three witnesses  
20 on there that I want her to subpoena for me. She is  
21 saying she is not going to do it. So that is a  
22 conflict there.

23 THE COURT: Well, if we are still doing this

1 next Thursday, just be prepared to put on the record  
2 before we get started the efforts you have undertaken  
3 to prepare for the case, and you can respond to the  
4 fact that you are not subpoenaing these witnesses. It  
5 may be your strategic position that they have nothing  
6 to offer. It is whatever it is, and you answer that  
7 next week.

8 MS. RYAN: I think that Mr. Gibbs -- the  
9 issue that Ms. Dunn alluded to, the difference in their  
10 approach to this, is that I don't believe that  
11 Mr. Gibbs thinks that walking off of a violation of  
12 probation sentence for a previous conviction  
13 constitutes an escape after conviction. I think that  
14 is the fundamental difference or fundamental problem  
15 that he is having with this.

16 THE COURT: I sensed that.

17 THE DEFENDANT: No, that's not it. I have to  
18 show you, but we don't have to get into that.

19 THE COURT: We will see you next Thursday.

20 (Whereupon, proceedings in the above-  
21 entitled matter were concluded.)  
22  
23

Exhibit - 5 - 3-8

1 ~~A~~ this to Judge Graves on October 22nd. It was a  
2 conflict with us before my trial and it was never  
3 resolved. Before we went to trial, like I said on  
4 October 22nd, Judge Graves told us to come back the  
5 following week. We came back the following week.  
6 You was the trial judge. So this was never resolved.  
7 ~~A~~ I had problems with her before in my trial. She  
8 ~~A~~ never prepared my defense for me. We never discussed  
9 any defense, and you see what happened at trial. ~~A~~ She  
10 wasn't even prepared to represent me at trial. ~~A~~ I  
11 sent her a letter October 2nd explaining everything,  
12 asking her to come and see me so we could prepare my  
13 case for trial, and she never done neither.

14 THE COURT: Well, you were charged with  
15 escape after conviction.

16 THE DEFENDANT: Exactly. I was a  
17 probationer.

18 THE COURT: Escape after conviction, you  
19 know as the charges go, is not the most difficult  
20 case to show.

21 Do you have other things that you would like  
22 to say about your disagreement or your differences  
23 with Ms. Dunn?



1 THE DEFENDANT: Do I have other things to  
2 say?

3 THE COURT: Yes.

4 THE DEFENDANT: This is my motion.

5 THE COURT: Well, I want to hear it from  
6 you. If you have things you want to say about Ms.  
7 Dunn, say it now.

8 THE DEFENDANT: Okay. This is my motion to  
9 dismiss counsel. Carole Dunn, Paula Ryan, James  
10 Adkins, Judge Graves, and also you, Judge Stokes,  
11 conspired in this case to have me found guilty at  
12 trial by an all-white jury.

13 Carole Dunn discussed my defense and the  
14 case and the conflict with Paula Ryan, you know what  
15 I'm saying. That's lawyer-client confidentiality.  
16 She revealed information pertaining to my  
17 representation of consultation.

18 \* Carole Dunn never came to see me to discuss  
19 the defense or to prepare for trial. The Supreme  
20 Court held that the Sixth Amendment right to counsel  
21 attaches to the critical stages of a pre-trial  
22 proceeding. U.S. v. Wade.

23 \* Carole Dunn refused to subpoena witnesses

1 and present a defense for me. I sent her a letter,  
2 my Exhibit A, from 6-11 to 10-22. Ms. Dunn never  
3 came to see me. And my transcript -- see the  
4 transcript of October 22nd. Right? I sent her a  
5 letter, you know, like I said, asking her to come and  
6 see me, dated October 2nd. She never came to see me,  
7 you know. And right here, it's U.S. v. Wade, you  
8 know, critical stages, are the points in a criminal  
9 proceeding when an attorney's presence is necessary  
10 to secure a defendant's right to a fair trial.

11 I never had a fair trial. You know, she  
12 didn't present -- well, almost through the trial when  
13 she told me, "Oh, now I got it," meaning she know  
14 what I'm talking about. In my correspondence that  
15 was sent to her, she never took the time out to read  
16 it or nothing.

17 Judge <sup>Bradley</sup> Graves, he was to be the trial judge  
18 on 10-22-03. Me and Carole Dunn appeared before  
19 Judge Graves and I expressed that a conflict was  
20 between defendant and counsel. Judge <sup>Bradley</sup> Graves stated  
21 that he would look into the situation. \*Next week, in  
22 which, you know, like I said, when we came back, you  
23 was the judge.

1           The State introduced sentencing orders from  
2    1988 in which I had already completed the sentence.  
3    I wasn't allowed to explain to the jury that  
4    conviction that I had from 1986 to 1991, was the  
5    conviction that I was serving, that I had served. I  
6    had a 15-year sentence and my conviction was served  
7    \* from 1986 to 1991. So how are they going to charge  
8    me with the escape after conviction? Escape after  
9    \* conviction is Smith v. State. \* It's 361 A.2d 327. He  
10   \* was serving a three-year sentence at Level 5. He  
11   went out on a 48-hour furlough and he never returned.  
12   That's an escape after conviction.  
13       \* I was a probationer in a halfway house and  
14   Work Release facility. A-Level 4 probationer. I  
15   sent Ms. Dunn this information. \* It was never  
16   presented during my trial. \* She never presented  
17   \* nothing that I sent her toward my defense.

18           The defendant will be filing the complaint  
19   against Judge Stokes, Judge Graves, Paula Ryan, James  
20   Adkins and Carole Dunn for violating defendant's --  
21   for violating the Sixth and Fourteenth Amendment  
22   rights. Wherefore, defendant moves that the  
23   Honorable Court will dismiss counsel and let the

1 defendant proceed pro se.

2 Here is a copy of my letter, my exhibit that  
3 I sent to Ms. Dunn. It's dated 10-2-03. I am  
4 sending you the witness list, with Judge Stokes and  
5 Cindy Murray and David Phillips names. Also enclosed  
6 is a portion of some research that I've done on my  
7 case to prove this escape is a third degree.

8 I sent you a letter 9-26-03, and you still  
9 failed to respond to me. I'm asking you in a  
10 professional manner to please come see me before my  
11 case review, the 22nd. As you know, my trial is the  
12 30th and Paula Ryan isn't offering me a plea and  
13 she's seeking the habitual. I'm going to close for  
14 now. I'll await your response.

15 ★ I never got a response.

16 THE COURT: Is there anything else you would  
17 like to say, sir?

18 THE DEFENDANT: ★ First, let me state for the  
19 record I filed a motion to dismiss counsel 12-1-03.  
20 I wasn't satisfied with her representation of my case  
21 on 10-22-03. ★ I informed Judge Graves that it was a  
22 conflict between Ms. Dunn and me. ★ I don't want her  
23 on my appeal. ★ I'll be filing for an ineffective



1 assistance of counsel against her. The evidence  
2 presented at trial didn't prove the charge of escape  
3 after conviction.

4 Under Title 11, 301, you have to prove  
5 beyond a reasonable doubt each element of the  
6 offense. They want to use a status sheet from 12 to  
7 14 years ago that I pled guilty to and charged, that  
8 I served a five-year sentence from 1988 to 1991 and  
9 was released to probation. ~~★~~ Virgil Sudler was an  
10 inmate over in Work Release. ~~★~~ He was serving a Level  
11 5 sentence over in a Level 4 facility. He went on  
12 escape. The State allowed him to plead guilty to  
13 third-degree escape. ~~★~~ They gave him 30 days Level 5.  
14 Like I said, ~~★~~ I was a probationer. Okay. ~~★~~ He  
15 was serving a Level 5 sentence. Okay?

16 THE COURT: You have an escape third degree.  
17 With your background, you could do 30 days of (k).

18 THE DEFENDANT: Okay. Now, can I proceed?  
19 Okay. I was a probationer just as Greg Foreman. He  
20 ~~★~~ had four escapes. He was charged with second-degree  
21 escape after conviction and he got six months at  
22 Level 5, released. <sup>Reese Reese</sup> ~~★~~ He was charged with second-degree  
23 escape after conviction, picked up a charge July 4th.

Exhibit - 6

14

1 THE COURT: I am asking you a straight  
2 question, is there anything else you want to say  
3 about Ms. Dunn?

4 THE DEFENDANT: No, I'm not saying nothing.

5 ~~THE COURT:~~ Step aside just for a minute.  
6 Now, Ms. Dunn, he has made some serious accusations  
7 about you.

8 ~~MS. DUNN:~~ Yes, he has, Your Honor.

9 ~~THE COURT:~~ Can you respond to them, please?

10 ~~MS. DUNN:~~ Well, Your Honor, this is a  
11 sentencing hearing. Is this an appropriate forum?

12 ~~THE COURT:~~ You had better believe it is  
13 appropriate.

14 MS. DUNN: I have a list, Your Honor, of the  
15 meetings and the work that I've done on this case. I  
16 can tell the Court that Mr. Gibbs had an initial  
17 intake interview not with me, but with our  
18 investigator back in June. He waived his preliminary  
19 hearing on the 18th, and during which he spoke to  
20 Mr. Moore of our office about his case. He received  
21 a client letter that I normally send out to the new  
22 clients, on June 19th. Actually, that was sent on  
23 June 23rd. Excuse me.

KATHY S. PURNELL  
OFFICIAL COURT REPORTER

1 I received my first letter from him on June  
2 30th. I responded to his June 19th letter, enclosing  
3 the escape after conviction statute which explains  
4 the elements of that statute, that offense. I  
5 included in there the entire habitual offender  
6 statute, noticing, as I reviewed his record, that  
7 that might be a possibility down the line in this  
8 case. I sent that out on July 2nd of this past year.

9 I then received two letters from him, one  
10 dated July 9, and one dated July 16. I had a video  
11 meeting with him from my office. He was at SCI on  
12 July 24. That's ~~Meeting No. 1~~. I had another letter  
13 from him dated that same day. I responded to three  
14 prior letters the following day, July 25. I  
15 responded to his letters of June 30, July 9, and July  
16 16. These letters and my video meeting  
17 questions -- I was following up on. I sent him  
18 information. I sent him a copy of our Rule 16  
19 discovery requests. ~~I sent him a copy of the Smith~~  
20 and the Flamer cases. I sent him a copy on that  
21 date, July 25th, of the witness form to request that  
22 he send back to me any names that he wants subpoenaed  
23 as witnesses.

Exhibit - 17

16

1        ~~A~~ Because it is my practice -- I don't speak  
2        for all attorneys, but I need to know what those  
3        witnesses are going to say. So I prefer to have  
4        those witnesses interviewed by an investigator of my  
5        office and not talk directly to those witnesses,  
6        since I don't want to involve myself in that process.

7        ~~THE COURT:~~ That is a recognized technique.  
8        Because if a lawyer speaks to a witness and it is  
9        just a lawyer and a witness, if it is going to be a  
10       contradiction on what the witness stated, then a  
11       lawyer would have to become a witness and not an  
12       advocate. So it is recognized among trial lawyers  
13       that it is desirable to have a third party take  
14       witness statements, and that has been well recognized  
15       for a long time.

16                MS. DUNN: And I'll continue, Your Honor.  
17        On July 31st I received a letter request from  
18        Mr. Gibbs for a bill of particulars. I also received  
19        a letter on August 13th requesting that we put in a  
20        motion to dismiss. We had case review on September  
21        2nd and I met with him on that date in Superior  
22        Court. That's a meeting, Personal [REDACTED] or  
23        a face-to-face meeting.



BOND REVIEW Exhibit - 1

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR SUSSEX COUNTY

THE STATE OF DELAWARE

WAIVER OF PRELIMINARY HEARING

WAIVER OF INDICTMENT

vs.

ED G. GILLES

I.D.#

The above-named defendant, being advised of the nature of the charge or charges and knowing his rights, hereby waives, in open court and/or by written pleading, the preliminary hearing and prosecution by indictment; and consents that the proceeding may be by information instead of indictment. In addition to Rule 16 discovery, the state shall provide copies of the police reports to the defense.

Edward Gilles  
DEFENDANT

Arthur G. Moore  
COUNSEL FOR DEFENDANT

DATE:

6-14-03

cc: Prothonotary  
cc: Department of Justice  
Attorney  
Defendant

Can't we dispose  
of this case with  
on Escrow 3rd and  
30 days 4204 R?  
of the defendant

Exhibit - 2

misdemeanor escape, and my July 25, 2003 letter to him confirms that fact. (Exhibit 5). Unfortunately, we were unable throughout the pendency of this case and negotiations with the prosecutor, which continued through the final case review, to achieve that result. Defendant never received a plea offer to anything less than Escape After Conviction.

Affiant asserts that the only "meaningful defense at trial" to defendant would have been a defense composed of "information" he sent to me asserting that the facts of his case and case law proved that he could be charged with and convicted of no more than Escape in the third degree. Defendant's legal interpretations and arguments for defense are contained in a mailing which I received on October 8, 2003, appended as Exhibit 18 hereto.

As mentioned earlier, after my research into the case law, and after seeking clarifications from the prosecutor's office as regards their policies affecting their charging under the escape law, I simply could find no legal support for defendant's interpretation; and, therefore, could not ethically  
\* advance a defense at trial known to be contrary to prevailing Delaware law, involving legal assertions that could not be made in the jury's presence, and proposing legal theories that the trial Judge had previously ruled (at pre-trial argument on motion to dismiss) were unsustainable and precluded under Delaware law.

Although I seriously considered and researched the interpretation and issues suggested by defendant as regards his defense, affiant states that her legal conclusion that such a defense was untenable was based on objective evaluation as regards the legal merit of the proposed argument.

That conclusion, however, does not mean that adversarial testing of the State's case was not zealously pursued, or that advocacy on behalf of defendant at trial was deficient.

The October 30, 2003 trial transcript can be consulted for the cross examination which took place of all the State's witnesses, objections that were made by affiant during the trial and motions

I/M Edward Gibbo

SBI# 148016 UNIT 22

DELAWARE CORRECTIONAL CENTER

1181 PADDOCK ROAD

SMYRNA, DELAWARE 19977



U.S.M.S.  
X-RAY

Clerk U.S. District Court

U.S. District Court

Lock Box 18 844 King St

Wilmington Del.

19801

Legal mail